

SENATE NO. 1073

AN ACT ESTABLISHING PAID SICK DAYS

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. PREAMBLE

2 The legislature, in order to advance healthier, more productive and more equitable workplaces
3 throughout the Commonwealth, and to promote the health and welfare of families within the
4 Commonwealth, hereby direct all employers to provide a minimum of 7 paid sick days per year, or the
5 appropriate percentage thereof as determined by this Act, for all of their employees.

6 SECTION 2: FINDINGS

7 The Legislature of the Commonwealth of Massachusetts makes the following findings:

8 1) Nearly every worker in the Commonwealth is likely to need, during any given year, time-off to
9 attend to their own illness or that of an immediate family member, or for routine medical care.
10 Almost half of all private sector workers do not earn a single paid sick day per year. Low-income
11 workers are significantly worse off. Over three quarters of the poorest families 76 percent lack any
12 regular paid sick leave.

13 2) Little more than 20% of workers who earn paid sick days can use it to care for children or elder
14 adult family members who may be ill.

15 3) When parents are available to care for their children who become sick, the children's recovery is
16 faster, more serious illnesses are prevented, and the children's overall mental and physical health is
17 improved. Parents who cannot afford to miss work must send children with a contagious illness to
18 childcare or school, contributing to the high rate of infections in child care centers and schools.

19 4) The majority of elder-care is performed by working family members. About one in every four
20 employees has provided informal care to an elderly family member or friend in the past year.

21 5) Preventive and routine medical care helps avoid illness and injury by detecting illnesses early
22 and shortening the duration of illnesses. Providing employees time-off to attend to their own health
23 care needs ensures that they will be healthier and more efficient employees in the long run. Routine
24 medical care results in savings by detecting and treating illness and injury early and decreasing the
25 need for emergency care. These savings benefit public and private payers of health insurance,
26 including private businesses.

27 6) Public health is jeopardized as many workers who do not have paid sick days have the most
28 frequent contact with the public such as workers in food services, nursing homes, child care centers,
29 and retail clerks. The spread of contagious diseases such as the flu cannot be stopped without a
30 universally adopted paid sick days policy.

31 7) Approximately 1.5 million women are assaulted, stalked or raped by an intimate partner each year;
32 31% of American women report being physically or sexually abused by a husband or boyfriend at
33 some point in their lives; and, on average, more than 3 women are murdered every day by their

34 husbands or boyfriends. 96% of employed victims of domestic violence experience some kind of
35 work-related problem due to violence; victims may need to take time off from work to participate in
36 criminal and civil legal proceedings and to address the effects of domestic violence such as relocating
37 their family and obtaining medical care. Providing paid sick days would mean important job security
38 for domestic violence victims, as between a quarter to a half of all victims of domestic violence lose
39 their jobs.

40 8) Providing 7 paid sick days per year to employees is affordable for employers and good for
41 business. Requiring all employers to provide paid sick days levels the playing field for employers by
42 taking this important benefit out of competition. Employers who provide paid sick days see greater
43 retention and avoid the problems of “presenteeism” or employees coming to work sick. Studies have
44 shown that costs from on-the-job productivity losses as a result of presenteeism exceed the costs of
45 absenteeism, medical and disability benefits.

46 SECTION 3: PURPOSE AND CONSTRUCTION

47 1) The purpose of this Act is to ensure that all workers in the Commonwealth of Massachusetts can
48 address their own health needs and the health needs of their families by requiring employers to provide
49 a minimum of 7 paid sick days per year; and

50 2) To alleviate undue burden on public and private health care systems by enabling workers to seek
51 early and routine medical care for themselves and their family members.

52 3) This Act is a remedial act which shall be liberally construed to further its purpose and all
53 presumptions shall be made in favor of providing workers with paid sick days leave.

54 SECTION 4: Section 148 of chapter 149 of the General Laws, as appearing in the 2004 Official
55 Edition, is hereby amended by inserting after the word “agreement,” in line 54, the following words:-
56 and any paid sick days owed and due under section 148C.

57 SECTION 5: Said chapter 149 is hereby amended by inserting after section 148B the following
58 section:-

59 Section 148C

60 (a) Definitions: As used in this section, the following terms shall have the following meanings:

61 “Child”, a biological, adopted, or foster child, stepchild, legal ward, or child of a parent
62 standing in loco parentis who is under 18 years of age, or 18 years of age or older but incapable of
63 earning wages because of a mental or physical incapacity.

64 “Employee”, any person who performs services for an employer for wage, remuneration, or
65 other compensation.

66 “Employer”, any individual, corporation, partnership or other entity, including any agent
67 thereof, who engages the services of an employee or employees for wages, remuneration or other
68 compensation.

69 “Federal act”, the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to 2654
70 inclusive, as it may be amended.

71 “Health care provider”, a provider who ____

(1)(i) is a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate); or who is a licensed practical nurse; or

(ii) is any other person determined by the attorney general to be capable of providing health care services; and

(2) is not employed by an employer to whom the provider issues certifications under this section.

“Parent”, a biological, foster, stepparent or adoptive parent of an employee or an employee’s spouse, or other person who stood in loco parentis during the childhood of an employee or employee’s spouse.

“Seven Paid Sick Days”, the total number of paid sick hours computed by determining the number of hours in a regular work day and multiplying this number by seven.

“Sick day”, a portion of, or a regular workday when an employee is unable to report to work because of the reasons described in subsection (c).

“Spouse”, the meaning given such term by the marriage laws of the Commonwealth of Massachusetts.

(b) All employees who work in the Commonwealth who must be absent from work for the reasons set forth in subsection (c) shall be entitled to not less than 7 sick days with pay during a 12-month period, or to a pro rata number of paid days or hours under the provisions of subsection (d). The 12-month period for each employee shall be calculated from the date-of-hire or subsequent anniversary date.

91 (c) Paid sick days shall be provided to an employee by an employer for:

92 (1) care for the employee's child, spouse, parent, or parent of spouse who is suffering from a
93 physical or mental illness, injury, or medical condition that requires home care, professional medical
94 diagnosis or care or preventative medical care, or that is covered under the federal act; or

95 (2) care for the employee's own physical or mental illness, injury, or medical condition that
96 requires home care, or professional medical diagnosis or care or preventative medical care, or that is
97 covered under the federal act; or

98 (3) an employee to attend a routine medical appointment for himself or herself or for a child,
99 or, in the case of a spouse, parent, or parent of spouse otherwise in need of care; or

100 4) an employee to address the psychological, physical or legal effects of domestic violence as
101 defined in subsection (g1/2) of section 1 of chapter 151A.

102 (d) Paid sick days leave shall accrue at the rate of one hour of pay for every 30 hours worked up to
103 the maximum of 7 paid sick days. Paid sick days may be used as accrued, or be loaned by the
104 employer, at its discretion, to the employee in advance of such accrual, provided that an employer
105 shall not require an employee to reimburse it for any unearned sick days. Unless the employer and
106 employee agree to designate otherwise, for periods of paid sick day leave that are less than a normal
107 workday, the leave shall be counted on an hourly basis, or the smallest increment that the employer's
108 payroll system uses to account for absences or use of leave.

109 (e) Subject to the provisions of subparagraph (o), an employer may require certification of the
110 qualifying illness, injury or health condition when a paid sick day leave period covers more than 3

111 consecutive workdays. Any reasonable documentation signed by a health care provider involved in
112 following or treating the illness, injury or health condition, and indicating the need for the amount of
113 sick days taken, shall be deemed acceptable certification. The certification shall be issued at such time
114 and in such manner the attorney general may by regulation require. The employer shall not delay the
115 commencement of leave taken for purposes of subsection (c) or pay for this period on the basis that
116 the employer has not yet received the certification. Nothing in this act shall be construed to require an
117 employee to provide as certification any information from a health care provider that would be in
118 violation of section 1177 of the Social Security Act or the regulations promulgated pursuant to section
119 264(c) of the Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2 note.

120 (f) If the necessity for paid sick days leave under this section is foreseeable, the employee shall
121 provide the employer with not less than 7 days notice before the date the leave is to begin. If the
122 necessity for leave is not foreseeable, the employee shall provide such notice as soon as is practicable
123 after the employee is aware of the necessity of such leave.

124 (g) Paid sick days shall carry over annually to the extent not used by the employee, provided that
125 nothing in this section shall be construed to require an employer to allow accumulation of more than 7
126 paid sick days leave for an employee unless an employer agrees to do so.

127 (h) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of, or the
128 attempt to exercise, any right provided under, or in connection with this section, including, but not
129 limited to using the taking of paid sick days under this section as a negative factor in an employment
130 action such as hiring, evaluation, promotion or a disciplinary action, or counting the paid sick days
131 under a no-fault attendance policy.

132 (i) It shall be unlawful for any employer to take any adverse action against an employee because the
133 employee 1) exercises rights or attempts to exercise rights under this section, 2) opposes practices
134 which such employee believes to be in violation of this section, or 3) supports the exercise of rights of
135 another under this section. Exercising rights under this section shall include but not be limited to
136 filing an action, or instituting or causing to be instituted any proceeding under or related to this
137 section; providing or about to provide any information in connection with any inquiry or proceeding
138 relating to any right provided under this section; or testifying to about to testify in any inquiry or
139 proceeding relating to any right provided under this section.

140 (j) The attorney general shall enforce this section, and may obtain injunctive or declaratory relief for
141 this purpose. Violation of this section shall be subject to the penalties in section
142 27C(b)(1),(2),(4),(6),(7) and the provisions in section 150.

143 (k) The attorney general shall prescribe the employer's obligation to make, keep, and preserve records
144 pertaining to this section and the requirements for keeping records under section 15 of chapter 151
145 shall apply to the records required under this section.

146 (l) Nothing in this section shall be construed to discourage employers from adopting or retaining paid
147 sick day policies more generous than policies that comply with the requirements of this section and
148 nothing in this section shall be construed to diminish the obligation of an employer to comply with any
149 contract, collective bargaining agreement, or any employment benefit program or plan that provides
150 greater paid sick day leave rights to employees than the rights established under this session.

151 (m) Employers who have a paid time off leave policy providing paid leave in excess of 20 days per
152 year shall not be required to modify such policy, if such policy offers an employee the option, at the

153 employee's discretion, to take paid sick days that is at least equivalent to the paid sick days described
154 in paragraphs (b), (c), and (f), or if the policy offers paid sick days leave in amounts equivalent to the
155 amounts described in such paragraphs for the purposes that include the reasons described in
156 subparagraph (b).

157 (n) The attorney general may adopt such rules and regulations as may be necessary to carry out the
158 purpose and provisions of this act, including the manner in which an employee who does not have a
159 health care provider shall provide certification..

160 (o) A notice of the provisions of this section shall be prepared by the attorney general, in English and
161 other languages as required under section 62A(a)(iii) of chapter 151A. Each employer shall post this
162 notice in a conspicuous location accessible to employees in every establishment where employees
163 having rights under this section work. Such notice shall include the following information:

164 (i) information describing the rights to paid sick days leave under this act;

165 (ii) information about the notices, documentation and any other requirements placed on
166 employees in order to exercise their rights to paid sick days;

167 (iii) information that describes the protections that an employee has in exercising rights under
168 this act;

169 (iv) the name, address, and phone number of the relevant department of the attorney general's
170 office where questions about the rights and responsibilities under the act can be answered; and

171 (v) information about filing of an action with the attorney general under this act.

172

173 SECTION 6: OUTREACH

174 The executive office of health and human services, in coordination with the attorney general, shall
175 develop and implement a multilingual outreach program to inform employees, parents, and persons
176 who are under the care of a health care provider about the availability of paid sick days under this act.
177 This program shall include the distribution of notices and other written materials in English and other
178 languages to all child care and elder care providers, domestic violence shelters, schools, hospitals,
179 community health centers, and other health care providers.

180 SECTION 7:

181 Section 150 of chapter 149 as so appearing is hereby further amended by inserting after the number
182 “148B” in line 21, the following:-

183 148C.

184 SECTION 8: EFFECTIVE DATES

185 (a) This act shall take effect within 90 days of its passage.

186 (b) In the case of a collective bargaining agreement in effect on the effective date
187 proscribed by subsection (a), this act shall take effect on the earlier of the date of the termination of
188 such agreement; or the date that occurs 12 months after the promulgation of regulations by the attorney
189 general.